

TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS

DIVISION 6: SOLID WASTE HANDLING FRANCHISES

Chapter 9: INDEMNIFICATIONS, INSURANCE AND BONDING.

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46.091 Indemnification of County.

Separate and distinct from the insurance provisions required by this Division, each Grantee shall appear and defend (with counsel approved by County) all actions against the Department and the County, and the Grantee agrees to defend, indemnify, and hold the County and/or its officers, agents, volunteers and employees harmless from and against, any and all claims and demands, causes of action of every kind and description, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including, but not limited to, injury to Grantee's officers, agents, or employees which arise directly or indirectly from or are connected with or are caused or claimed to be caused by acts, errors or omissions of Grantee, or its officers, agents, or employees, in exercising its rights or in performing its duties under its Franchise Agreement or under this Division, and all costs and expenses of investigating and defending against same; except to the extent such indemnification is prohibited by law.

Adopted Ordinance #3670 (1996);

46.092 Hazardous Waste Indemnification.

Without limiting the generality of the foregoing, if Grantee has negligently or willfully acted or failed to act with respect to the collection, handling or transportation of Hazardous Waste, Grantee shall indemnify, defend with counsel approved by County, protect and hold harmless the County and its respective officers, employees, agents, volunteers, assigns, and any successor or successors harmless from and against all claims, actual damages (including, but not limited to, special and consequential damages), natural resources damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, County or its respective officers, employees, agents, or Grantees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste which Grantee has negligently or willfully acted or failed to act with respect to its collection, handling or transportation at any place where Grantee stores, handles, transports or disposes of Solid Waste pursuant to its Franchise Agreement. The foregoing indemnity is intended to operate and shall operate as an Agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, indemnify, and hold the County harmless from liability.

Adopted Ordinance #3670 (1996);

46.093 Minimum Diversion Requirements.

(a) The percentage of all materials collected by Grantee to be recycled, processed and/or marketed by Grantee in a manner which entitles County to diversion credit as specified in Public Resources Code Section 41780, measured on a calendar year basis, ("Minimum Diversion Requirement") shall be established by agreement between the Grantee and the County as part of the process of negotiating a Franchise Agreement. The specific program and manner of reimbursement of the Grantee, including the sharing of recycling material receipts, if any, shall be determined as a part of the Franchise Agreement. Within sixty (60) days after the end of each calendar year during the term of its Franchise Agreement, Grantee shall pay County as liquidated damages for failing to meet this requirement the per ton liquidated damages set forth in its Franchise Agreement, for each ton which was not diverted, which if it had been diverted would have enabled Grantee to meet the Minimum Diversion Requirement.

(b) If Grantee fails to meet the annual Minimum Diversion Requirements more than three (3) times, during any consecutive 7 years of the term of its Franchise Agreement, County may terminate its Franchise Agreement upon one hundred twenty (120) days advance written notice.

(c) If recycling is being performed by waste generators and others to the extent that Grantee is unable to meet its

Minimum Diversion Requirement, Grantee shall report such circumstances to the Director in writing and petition the Director for an equitable adjustment of Grantee's Minimum Diversion Requirement based on such circumstances, which adjustment shall not be unreasonably denied.

(d) If the County finds that additional programs are necessary to meet any AB 939 required diversion goals the County may require Grantee to provide proposals for additional diversion programs to meet the diversion requirements. Compensation for such additional programs shall be established under the terms of this Division as a Change in Service Level Adjustment.

Adopted Ordinance #3670 (1996);

46.094 Diversion Indemnification.

(a) Grantee agrees, on a pro rata basis (with such basis being determined as set forth below), to protect and defend County with counsel selected by Grantee and approved by County, which approval shall not be unreasonably withheld, and to indemnify and hold the County harmless from and against all fines or penalties imposed by the California Integrated Waste Management Board on account of AB 939 diversion goals, specified in California Public Resources Code Section 41780, not being met by County, if such diversion goals are not met as the result of acts or omissions of Grantee or failure by Grantee to implement in good faith all diversion programs required or approved by the County or as a result of Grantee's failure to provide County with necessary data reasonably available to Grantee regarding attainment of diversion goals.

(b) Except where the Grantee's liability under this Section arises because of a failure to provide County with necessary data, the pro rata basis of Grantee's indemnification under this Section shall be determined by comparing the amount of waste by which the Grantee failed to meet its Minimum Diversion Requirement to the total amount of waste by which all Grantees in all Franchise Areas, if any, failed to meet their respective Minimum Diversion Requirement. Where the Grantee's liability arises because of a failure to provide County with necessary data, the pro rata basis of Grantee's indemnification under this Section shall be determined by comparing the amount of Solid Waste collected in Grantee's Franchise Area to the amount of Solid Waste collected in all Franchise Areas, if any, where any Grantee has incurred liability under this Section for any reason.

(c) Liquidated damages paid for failing to meet the Minimum Diversion Requirement in accordance with the provisions of Section 46.093 shall be credited toward the Grantee's satisfaction of the indemnification set forth in this Section.

Adopted Ordinance #3670 (1996);

46.095 Insurance Requirements.

In order to accomplish the indemnifications provided above, but without limiting the duty, each Grantee shall secure and maintain at its sole cost throughout the term of its respective Franchise Agreement the following types of insurance issued by companies acceptable to the County's Risk Manager with limits as may be reasonably prescribed by the County's Risk Manager as a reflection of the County's risk in respect to operations under a particular Franchise Agreement:

(a) Workers' Compensation in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability covering all persons providing services under the Franchise Agreement.

(b) Comprehensive General and Automobile Liability Insurance, including contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles with combined single limits for bodily injury, death and property damage.

(c) All required insurance policies, except for the Workers' Compensation coverage, shall contain endorsements naming the County, and its employees, agents, volunteers and officers as additional named insureds with respect to liabilities arising out of operating under the Franchise Agreement.

(d) The Grantee shall require the carriers of the above required insurance coverage to waive all rights of subrogation against the County, its officers, volunteers, employees, contractors and subcontractors.

(e) All policies required by this Section must be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

(f) Prior to commencing operations under a Franchise Agreement, Grantee shall furnish to the Department certificates of insurance evidencing the insurance coverage required above. Each such certificate shall provide that the insurance coverage evidenced thereby shall not be expired, canceled, terminated or reduced in amount without at least thirty (30) days advance written notice to the Department. Within sixty (60) days after the effective date of a Franchise Agreement, the Grantee shall furnish to the Department certified copies of all of the policies and endorsements required by this Section. Proofs of renewal or of substitution of carriers shall be provided to the Department promptly as such events occur.

(g) All insurance requirements are subject to annual review by the County, with the results of such review to be provided to a Grantee on or before the anniversary of the effective date of its Franchise Agreement. If the County's Risk Manager determines at any annual review that heretofore unreasonably priced or unavailable types of insurance

coverage or coverage limits become reasonably priced or available, the County's Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any such change shall be treated as a Change in Law Adjustment, under the provisions of this Division.

(h) Grantee shall not be required to maintain separate policies of insurance for any type of insurance required under both this Section and Chapter 8 of Division 3 of Title 3 of this Code. However, Grantee must maintain the level of insurance which is the higher of that required in this Section and Chapter 8 of Division 3 of Title 3 of this Code, and must obtain and maintain insurance coverage which satisfies all of the provisions of this Section and Chapter 8 of Division 3 of Title 3 of this Code, including without limit, providing certificates of insurance to all specified departments of the County and requiring notification of the cancellation or termination of any insurance policy be given by the insurance company to all specified departments of the County.

Adopted Ordinance #3670 (1996);

46.096 Performance Bonds or Other Security.

Grantee shall furnish to the County without additional charge a corporate surety bond, a letter of credit or other security device acceptable to the Department, as security for performance under its Franchise Agreement (collectively "Security"). The amount of the Security shall be the average of one month's expected Gross Receipts Less Disposal Charge. Adequate proof of the existence of the Security shall be provided (e.g., a certificate from the surety showing that the bond premiums have been paid in full shall accompany the bond and each renewal thereof). The surety on the bond, the bank on which the letter of credit is drawn and the surety for any other Security device shall be a company acceptable to the County and shall be authorized to do business in the State of California.

Adopted Ordinance #3670 (1996);

46.097 Liquidated Damages Deposit.

Each Grantee shall be required to maintain a bank account from which the Department will have the ability to remove, on the sole signature of the Director, sums of money equal to any liquidated damages assessed against Grantee under the provisions of Section 46.102. Grantee shall be required to maintain a minimum balance of \$2,500 in the account; the Grantee must restore the account to such minimum balance within 10 days after the mailing of any monthly statement from the bank showing, or written notice from the Department stating, that the balance of the account has fallen below the \$2,500 required minimum. The sums on account shall belong to Grantee and all interest on said account belongs to, and all costs related to such account shall be the responsibility of, Grantee. To the extent possible, Grantee shall require the bank to provide a copy of a monthly account statement to the Department; in the event that the bank is unwilling to provide such a statement, Grantee shall provide a true and complete copy of its monthly account statement to the Department within 5 working (waste collection) days of its receipt by the Grantee.

Adopted Ordinance #3670 (1996);

46.098 Modification.

The requirements of this Chapter may be modified or waived in writing by the Board upon the request of Grantee, provided the Board reasonably determines such modification or waiver is in the best interest of County and of the public welfare, considering all relevant factors, including acceptable financial guarantees provided by Grantee or by a parent company of Grantee.

Adopted Ordinance #3670 (1996);